Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1997

MARY ANN SMANIA,

Petitioner,

v.

THE FLORIDA BAR,

Respondent.

On Petition For Writ Of Certiorari To The Supreme Court Of Florida

PETITION FOR WRIT OF CERTIORARI

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96 pp

QUESTIONS PRESENTED

Whether the First Amendment protects truthful advice by a layperson to an indigent litigant?

Does an injunction against giving truthful and written advice which is predicated solely on the *possibility* of future harm violate the First Amendment?

PARTIES TO THE PROCEEDING

The parties to the proceedings below, Case No. 85,818, were Petitioner, Mary Ann Smania, and Respondent, The Florida Bar. Petitioner's case was heard with Case No. 85,819 in which Carolyn Fankhanel was the Respondent and The Florida Bar was the Petitioner. Their cases were consolidated by order of the Florida Supreme Court over the objection of Petitioner.

The parties before the Court are only Petitioner, Mary Ann Smania and Respondent, The Florida Bar.

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OPINIONS BELOW

Circuit Judge Robert M. Evans of Orange County, Florida, appointed as Referee by the Supreme Court of Florida, recommended that an injunction issue against Petitioner. App. 10-11. The Supreme Court of Florida affirmed, in part, the Referee's Report and issued a permanent injunction against Petitioner on September 4, 1997. App. 4.

JURISDICTION

Petitioner invokes the jurisdiction of this Court pursuant to 28 U.S.C. § 1257. She seeks review of the Order of the Supreme Court of Florida, filed September 4, 1997. App. 1.

On December 2, 1997, Justice Kennedy extended the time to file a petition for a writ of certiorari to and including January 15, 1998.

CONSTITUTIONAL PROVISION INVOLVED

First Amendment

> Congress shall make no law . . . abridging the freedom of speech . . .

REGULATIONS INVOLVED

Rules Regulating the Florida Bar, Chapter 10, Rules Regulating the Investigation and Prosecution of the Unlicensed Practice of Law:

> Rule 10-1. Jurisdiction.
>
> Pursuant to the provisions of article V, section 15, of the Florida Constitution, the Supreme Court of Florida has inherent jurisdiction to prohibit the unlicensed practice of law.
>
> Rule 10-1.2 Duty of the Florida Bar
>
> The Florida Bar, as an official arm of the court, is charged with the duty of considering, investigating, and seeking the prohibition of matters pertaining to the unlicensed practice of law and the prosecution of alleged offenders. The court shall establish a standing committee on the unlicensed practice of law and at least 1 circuit committee on unlicensed practice of law in each judicial circuit.
>
> Rule 10-2.1 Generally
>
> Whenever used in these rules the following words or terms shall have the meaning herein set forth unless the use thereof shall clearly indicate a different meaning:
>
> (a) Unlicensed Practice of Law. The unlicensed practice of law shall mean the practice of law, as prohibited by statute, court rule, and case law of the State of Florida. For purposes of this chapter, it shall not constitute the unlicensed practice of law for a nonlawyer to engage in limited oral communications to assist a person in the completion of blanks on a legal form approved by the Supreme Court of Florida.

> Oral communications by nonlawyers are restricted to those communications reasonably necessary to elicit factual information to complete the blanks on the form and inform the person how to file the form.
>
> . . . .

STATEMENT OF THE CASE

This case challenges the breadth of an injunction issued against Petitioner arising from her various attempts as a layperson active in the legal reform movement to assist a litigant in a dissolution matter. As a result of Petitioner's giving the litigant truthful, oral advice, drafting legal documents, editing an affidavit, and filing a notice of appearance as a "legal reform practitioner," The Florida Bar filed a petition alleging the unlicensed practice of law. App. 61.

Petitioner is a legal reform practitioner and lobbyist who peacefully pursues reform of the profession of law by contributing to a journal publication reporting various opinions on legal issues and answering questions for laypersons in need of legal assistance, peacefully assembling with others to discuss opinions on legal issues and participating in *pro se* cases in the Florida courts, App. 51-54. In the "Grass Roots Journal," a legal reform publication, Petitioner contributes to the "Dear Advocate" column, in which written answers and suggestions are provided to laypersons' questions about legal issues. App. 56-60. On May 21, 1993, Petitioner assisted Norma Vaughan ("Vaughan") in a dissolution matter. App. 49; 74-77. Petitioner identified herself in legal documents as a

legal reform practitioner and fully disclosed that she was not a lawyer, would not function as a lawyer, and at no time held herself out to be a lawyer to Vaughan or anyone else. App. 63, 74. Vaughan alleged that she had been denied use of funds to hire an attorney, could not find other counsel to assist her, and was not competent to proceed *pro se*. App. 68-72. Vaughan disclosed to the court that of the lawyers she consulted to represent her, all but one advised her that it would be more beneficial for her financially to agree to the divorce, rather than to oppose it. App. 69. Vaughan continued to oppose the divorce and asked Petitioner and another layperson to act as her representatives in court. App. 74, 78. Petitioner agreed because Vaughan's position in the case was compatible with her political philosophy and her legal reform agenda. App. 50, 51, 74-77. Petitioner's signature appears on documents filed with the court; pleadings were also signed by Vaughan who identified herself in the trial and appellate courts as proceeding *"in propria persona"* and *"pro se"* App. 72. Documents to which Petitioner contributed reflected her legal reform agenda concerning, among other things, the role of non-lawyer advocates in the judicial system, abuse of guardianship laws, and the sanctity of marriage. App. 74-77.

On June 5, 1995, The Florida Bar filed a petition against Petitioner for the unlicensed practice of law. App. 61. On July 19, 1995, Petitioner filed a counterclaim asserting a violation of her First Amendment rights. App. 26. On March 21, 1997, a Referee appointed by the Florida Supreme Court found that "[a]lthough well-intentioned, the aforementioned pleadings *could* result in harm to litigants in the future who *could* rely on [Petitioner's]

advice, representations and assurances." App. 11. Nevertheless, the Referee recommended that Petitioner be enjoined from (1) appearing in court on behalf of others except as a witness; (2) drafting, signing, or filing pleadings or memoranda of law for others; (3) giving legal advice for compensation; and (4) engaging in the practice of law in the State of Florida in any other manner, unless Petitioner received a license to practice law. App. 11. The Referee specifically recommended that the injunction issue in such a manner so as not to conflict with "the publication of new journals, periodicals, or other forms of free speech." App. 11.

The Florida Supreme Court did not accept the Referee's recommendations in whole; instead it issued a broader injunction against Petitioner, ordering not only that she be permanently banned from appearing in court on anyone's behalf, drafting, signing, or filing pleadings, and engaging in the practice of law, but also that she be permanently banned from giving legal advice, regardless of whether she asked for or received compensation. App. 1. Further, the Florida Supreme Court refused to adopt the Referee's recommendation that the injunction not interfere with Petitioner's other legal reform activities, stating, instead, that while it did not "intend" to interfere with Petitioner's First Amendment rights, "as non-lawyers, the activities from which [Petitioner is] hereby enjoined do not constitute protected speech." App. 4-5.

SUMMARY OF ARGUMENT

This case presents the question of whether an injunction which permanently prohibits a legal reform practitioner from peacefully appearing in court on anyone's behalf unless appearing as a witness, assisting anyone with the preparation of pleadings, memoranda of law, or giving free advice, violates Petitioner's First Amendment rights to free speech and association.

In addition to its overbreadth, the injunction issued against Petitioner violates the First Amendment because it was predicated only on the *possibility* of future harm. There was no finding that Petitioner caused any harm. On the contrary, record evidence indicates that Petitioner's advice and conduct provided valuable assistance to a *pro se* litigant. Indeed, the Referee appointed by the Florida Supreme Court found that Petitioner's advice and conduct was "well-intentioned." Without a finding or at least an inquiry into whether Petitioner's conduct was likely to cause anyone harm, the injunction violates the First Amendment.

ARGUMENT

I. TRUTHFUL ADVICE BY A LAYPERSON TO AN INDIGENT LITIGANT CANNOT BE BANNED UNDER THE FIRST AMENDMENT.

While courts have almost uniformly rejected First Amendment challenges to unlicensed practice of law ("UPL") statutes, rules and injunctions, *Lawline v. American Bar Ass'n*, 956 F.2d 1378 (7th Cir. 1992), courts have

recognized that there "may well be many activities which lawyers engage in which are protected by the First Amendment and which could not be constitutionally prohibited to laypersons." *Id.* at 1386.

Even those forms of unauthorized practice that involve speech plus conduct retain significant constitutional protections. State regulation in this area must burden "no more speech than necessary to serve a significant governmental interest." *Madsen v. Women's Health Center*, 512 U.S. 753, 765 (1994). In *Madsen*, this Court observed that " 'injunctive relief should be no more burdensome to the defendants than necessary to provide complete relief to the plaintiffs.' " *Id.* (*quoting Califano v. Yamaski*, 442 U.S. 682, 702 (1979)). Citing *NAACP v. Claiborne Hardware*, 458 U.S. 886, 916 (1982) and *Carroll v. President and Comm'rs Princess Anne*, 393 U.S. 175, 183-84 (1968), the Court further noted that "when sanctionable 'conduct occurs in the context of constitutionally protected activity . . . 'precision of regulation is demanded.' " *Id.* Significantly, this Court stressed that the standard articulated in *Madsen* is the functional equivalent of *Carroll's* requirement that an injunction be "couched in the narrowest terms that will accomplish the pin-pointed objective" of the injunction. *Madsen*, 512 U.S. at 767. ("We fail to see a difference between the two standards.").

The standard adopted in *Madsen* reflects a conception that neither the state nor private parties "ordinarily" should rely on injunctions to serve their interests in regulating abusive expression. Such injunctions come to the Court "bearing a heavy presumption against constitutional validity." *Carroll*, 393 U.S. at 181. Although not content-based *per se* (*Madsen*, 114 S.Ct. at 2523-24), such

injunctions nonetheless are directed specifically against particular speakers, organizations, and protests, and reflect judge-created norms untethered from a more broad-based legislative process. *See Madsen*, 512 U.S. at 764. ("Injunctions carry greater risks of censorship and discriminatory application than do general ordinances.").

In cases such as this, Florida urges that the most significant governmental interests served in regulating the practice of law is "the protection of the public from incompetent, unethical, or irresponsible representation." *The Florida Bar v. Moses*, 380 So.2d 412, 416 (Fla. 1980). These concerns, however, have been criticized as neither necessary nor narrowly drawn to justify sweeping injunctions such as that issued here. *See, e.g.*, Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Problems*, 34 Stan.L.Rev. 1 (1981) (arguing that restraints on lay practice are not necessary to a state's interest in preventing incompetent legal assistance); Barlow F. Christensen, *The Unauthorized Practice of Law: Do Good Fences Really Make Good Neighbors – or Even Good Sense?*, 1980 Am.B.Found.Res.J. 159 (tracing the history of restrictions on unauthorized practice and advocating their abolition); Milton S. Friedman, *Capitalism and Freedom* (1962) (arguing that licensure invariably leads to monopolistic control by members of an occupation).

As to the state's interest in competent representation, preparation of pleadings in simple divorce or real estate transactions present the weakest argument for excluding lay practitioners. In-court representation may represent the strongest argument for excluding lay practitioners. And, in the case of litigants entitled to proceed *pro se*,

some lay assistance may be better than none. *See, e.g., Johnson v. Avery*, 393 U.S. 483 (1969); *United States v. Whitesel*, 543 F.2d 1176 (6th Cir. 1976), *cert. denied*, 431 U.S. 967 (1977). As the experience of many administrative tribunals suggests, specialist lay people are as competent in some areas as generalist attorneys. *See* M. Zander, *Legal Services For the Community*, at 317-322 (1978) (discussing lay representation by friends, relatives, and trade union officials in national insurance and industrial tribunals). Yet the injunction challenged here makes no such distinctions.

As to the interest in ethical representation, commentators who have reviewed cases enjoining unauthorized practice of law have found no cases averting ethical abuses. Rhode, *supra* at 90. Further, Professor Rhode has observed that "unauthorized practice restraints are a questionable means of advancing these concerns," *id.* at 91-2, and questioned "whether the absence of bar supervision would significantly increase the risks to which the public is already exposed." *Id.* at 93.

There are various less restrictive and narrowly drawn alternatives to the sweeping prohibitions in the challenged injunction. First, lay people providing oral advice or preparing pleadings could be subject to the same standards of competence and ethical conduct as attorneys for the purposes of civil liability. Second, lay practitioners could be required to obtain informed consent before providing services to any potential clients. And third, states could require some kind of registration perhaps coupled with contributions to a client security fund.

The injunction restricts Petitioner from appearing in a courtroom as a supporter of someone who is unrepresented, either as a "watcher" over that person's rights, or as a legal reform advocate who wants to show her support for a particular litigant. The restriction on "appearance" restricts Petitioner's right to be in the courtroom and speak to any litigant, make suggestions, give guidance, or provide moral support.

For these reasons, the injunction issued against Petitioner is overbroad and violates her First Amendment rights.

II. AN INJUNCTION AGAINST GIVING TRUTHFUL ORAL AND WRITTEN ADVICE WHICH IS PREDICATED ONLY ON THE POSSIBILITY OF FUTURE HARM VIOLATES THE FIRST AMENDMENT.

In this case, the Florida Supreme Court permanently enjoined Petitioner from giving truthful oral and written advice (implicit in the form of pleadings) based solely on a referee's finding that "[a]lthough well-intentioned, the aforementioned pleadings *could* result in harm to litigants who *could* rely on [Petitioner's] advice, representation and assurances." App. 10.

The breadth of this injunction is such that it prohibits Petitioner from advocating to others that they challenge an unconstitutional law; that they engage in litigation; and from providing advice of potential criminal penalties were they to engage in civil disobedience. The injunction also prohibits Petitioner from publishing the "Dear Advocate" column in the "Grass Roots Journal," because to do so could constitute giving free legal advice, or assisting a

pro se litigant with questions regarding the litigant's own pleadings.

The First Amendment protects advocacy even of illegal conduct except when advocacy is "directed to inciting or producing imminent lawless action and is likely to incite or produce such action." *Brandenburg v. Ohio*, 395 U.S. 444, 447 (1969).

This right of advocacy protects non-lawyer organizations that advise persons of their legal rights; *see NAACP v. Button*, 371 U.S. 415 (1963) (protecting the NAACP's right to advise persons of their legal rights and solicit their improvement in racial discrimination suits); *In re Primus*, 436 U.S. 412 (1978) (protecting the ACLU's right to give legal advice and solicit involvement in lawsuits); and includes the right of named plaintiffs to communicate with potential class members; *see Rodgers v. United States Steel Corp.*, 508 F.2d 152, 162 (3d Cir.), *cert. denied*, 423 U.S. 832 (1975) (an order restricting communications with potential class members by the plaintiffs or their attorneys "certainly raises serious first amendment issues").

CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Court grant the Petition for Writ of Certiorari.

Respectfully submitted,

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NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. UNTIL RELEASED, IT IS SUBJECT TO REVISION OR WITHDRAWAL.

THE FLORIDA BAR, Complainant,

v.

Mary Ann SMANIA and Carolyn Fankhanel, Respondents.

Nos. 85,818, 85,819.
Supreme Court of Florida.
Sept. 4, 1997.

Two Original Proceedings – The Florida Bar.

John F. Harkness, Jr., Executive Director; John T. Berry, Staff Counsel; Mary Ellen Bateman, UPL Counsel and Lori S. Holcomb, Assistant UPL Counsel, Tallahassee, Florida; and Barry W. Rigby, Branch UPL Counsel, Orlando, Florida, for Complainant.

Mary Ann Smanie [sic], pro se, Oakland Park, Florida; Carolyn Fankhanel, pro se, St. Petersburg, Florida; and Linsey Moore, Melbourne, Florida, for Respondent.

PER CURIAM.

We have for review the complaint of The Florida Bar and the referee's report regarding the unlicensed practice of law by Mary Ann Smania and Carolyn Fankhanel. We have jurisdiction. Art. V, s 15, Fla. Const.

The Florida Bar filed separate petitions against Mary Ann Smania and Carolyn Fankhanel, alleging the

unlicensed practice of law. The cases were consolidated and Judge Robert M. Evans was appointed as referee.

The referee's report contains the following findings of fact. Fankhanel, publisher of a news journal entitled "The Grass Roots Journal," signed and filed a notice of appearance in a dissolution action to which she was not a party, stating that she had agreed to act as a representative for Norma Vaughan, one of the parties to the dissolution action. A memorandum of law filed in the dissolution action was signed by Fankhanel and Smania. An "Affidavit for Appointment of Counsel" was contemporaneously filed with the memorandum of law. The affidavit, prepared and signed by Vaughan but edited by Smania and Fankhanel, appointed Smania and Fankhanel and indicated that they would be paid for their services.

The initial brief filed and served in Vaughan's subsequent appeal was signed by Smania and Fankhanel. Smania's signature also appeared on an objection to a notice of appearance filed by Vaughan. The objection also stated, "The fees of Legal Reform Practitioners Smania and Fankhanel have just gone up." Fankhanel and Smania identify themselves as "Legal Reform Practitioners" and admit they are not licensed to practice law in Florida or any other state.

On a motion for partial summary judgment filed by the Bar, the referee concluded that the preparation and filing of legal documents by Smania and Fankhanel for Norma Vaughan constituted the unlicensed practice of law. Consequently, all pleadings signed and filed by them were subject to being struck as defective. The referee further determined that Smania and Fankhanel's actions

could result in harm to future litigants who might rely on Smania and Fankhanel's advice, representation, and assurances.

The referee recommended that Smania and Fankhanel each be restrained and enjoined from: appearing in court on behalf of others other than as a witness; drafting, signing, or filing pleadings or memoranda of law for others; giving legal advice for compensation; and engaging in the practice of law in Florida in any other matter until the respective respondent is duly licensed to practice in Florida. Finally, the referee recommended that costs not be taxed against Smania and Fankhanel.

The respondents do not challenge the referee's findings of fact or recommendations as to guilt in the traditional manner. However, Smania filed a "Motion to Strike Report of Referee and Standing Order for Court to Recognize Smania as a Separate Legal Entity," in which she claims, among other matters, that the referee had no jurisdiction over her. There is no merit to this argument. Rule 3-3.1 of the Rules Regulating the Florida Bar expressly states that referees are "agencies for the Supreme Court of Florida" for the purpose of administering this Court's exclusive jurisdiction over the discipline of persons admitted to the practice of law[1] and have "such jurisdiction and powers as are necessary to conduct the proper and speedy disposition of any investigation or cause." We therefore deny the motion as to this and all

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[1] Art. V, s 15, Fla. Const. This authority carries with it the power to prevent the unlicensed practice of law. *State ex rel. Fla. Bar v. Sperry*, 140 So.2d 587 (Fla.1962), *vacated on other grounds*, 373 U.S. 379, 83 S.Ct. 1322, 10 L.Ed.2d 428 (1963).

other matters raised in the motion. We also find no merit to Fankhanel's "Objection to the Untimely and Outrageously Inaccurate 'Referee' Report, Memorandum Brief, and Request for Oral Arguments."

As to the recommendation of discipline, the Bar filed an objection, taking issue with that portion of the referee's report recommending that Smania and Fankhanel be enjoined from giving legal advice *for compensation*. We agree. As the Bar correctly points out, compensation is not a necessary element of proving that an individual has engaged in the unlicensed practice of law. *See Florida Bar v. Keehley*, 190 So.2d 173 (Fla.1966) (approving finding by referee that lack of compensation did not legalize respondent's actions); *Florida Bar v. Greene*, 589 So.2d 281 (Fla.1991) (approving referee's finding that attorney under suspension had engaged in the practice of law notwithstanding that attorney had not charged for services). Thus, we approve the referee's report with the caveat that Smania and Fankhanel may not give legal advice, regardless of whether they charge compensation.

We hereby permanently enjoin Smania and Fankhanel each from appearing in court on behalf of others other than as a witness; drafting, signing, or filing pleadings or memoranda of law for others; giving legal advice; and engaging in the practice of law in Florida in any other matter until the respective respondent is duly licensed to practice in Florida.[2]

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[2] The referee also recommended that the restraining order be issued so as not to conflict with the publishing of news journals, periodicals, or other forms of free speech. By issuance of this injunction, we do not intend to interfere with the free

It is so ordered.

KOGAN, C.J., and OVERTON, SHAW, GRIMES, HARDING, WELLS and ANSTEAD, JJ., concur.

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speech rights of either Smania or Fankhanel. However, as nonlawyers, the activities from which they are hereby enjoined do not constitute protected speech. *See Florida Bar Re Advisory Opinion-Nonlawyer Preparation of Living Trusts*, 613 So.2d 426, 428 (Fla.1992); *The Florida Bar Re Advisory Opinion – Nonlawyer Preparation of Pension Plans*, 571 So.2d 430, 433 (Fla.1990); *Florida Bar v. Furman*, 376 So.2d 378, 379 (Fla.1979).

IN THE SUPREME COURT OF FLORIDA
BEFORE A REFEREE

THE FLORIDA BAR

Petitioner,

v.

MARY ANN SMANIA,

Respondent.

CASE NO. 85,818

****

CONSOLIDATED WITH

THE FLORIDA BAR,

Petitioner,

v.

CAROLYN FANKHANEL,

Respondent.

_____/

CASE NO. 85,819

REPORT OF THE REFEREE

I SUMMARY OF THE PROCEEDINGS

Pursuant to the undersigned being duly appointed as referee to conduct proceedings herein according to Rule 10-7.1(b) (6), Rules Regulating The Florida Bar, the following proceedings occurred:

1. On June 5, 1995, Petitioner, The Florida Bar filed a Petition against the Unlicensed Practice of Law against Respondents Carolyn Fankhanel and Mary Ann Smania.

2. On July 18, 1995, Respondent Fankhanel filed her Answer to Petition against the Unlicensed Practice of Law.

3. On July 19, 1995, Mary Ann Smania, Respondent filed a counterclaim in response to the June 5th petition.

4. On December 4, 1995, the undersigned was appointed referee through an Order Appointing Referee enter by Acting Chief Judge Alice Blackwell White of the Ninth Judicial Circuit of Florida.

5. On May 17, 1996, Petitioner filed a Motion for Partial Summary Judgment directed to the activity of preparation of pleadings and papers on behalf of Norma Vaughan.

6. On May 17, 1996, a hearing on the Motion for Partial Summary Judgment was held and the Motion was granted.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

A. Jurisdictional Statement: Pursuant to Rules 10-1.1 and 10-7.1 of the Rules Regulating the Florida Bar, the Florida Supreme Court has jurisdiction to prohibit the unlicensed practice of law and to file a complaint for civil injunctive relief. Respondents Fankhanel and Smania admitted that they are not licensed attorneys in this or any other state. Therefore, the Referee has jurisdiction to hear this matter and issue the following Findings of Fact conclusions of law and Recommendations.

B. Findings of Fact:

1. A Notice of Appearance was filed on or about May 23, 1993, in the case styled In Re: The Marriage of Clarence Buford Vaughan and Norma Vaughan, Case Number: DR92-12843 (hereinafter referred to as "the dissolution action); Fankhanel signed and filed a similar Notice of Appearance. In the Notice of Appearance, the Respondent Fankhanel admitted that she is not an attorney, and stated that she agreed to act as a representative for Norma Vaughan in the dissolution action. Smania also admitted that she is not an attorney and that she likewise agreed to represent Norma Vaughan in the dissolution action.

2. Both Fankhanel and Smania have identified themselves as "Legal Reform Practitioners" and have admitted that neither is licensed to practice law in the State of Florida.

3. Respondent Fankhanel publishes a news journal called "The Grass Roots Journal" (hereinafter the "Journal") which discusses various opinions and reports on primarily legal issues.

4. A Memorandum of Law was filed in the dissolution action on May 21, 1993, which was signed by Fankhanel and Smania.

5. An Affidavit for Appointment of Counsel was contemporaneously filed with the Memorandum of Law. Although signed only by Vaughan, the affidavit purports to have been prepared by Vaughan and edited by Smania and Fankhanel. The affidavits appoint Fankhanel and

Smania and indicates that they would be paid for their services.

6. An Initial Brief of Appellant Norma Vaughan was filed in the Fifth District Court of Appeals in the case styled Norma Vaughan, Appellant vs. Clarence Buford Vaughan, Appellee, Case Number 93-1377 (hereinafter referred to as "the appeal"). It was served on August 8, 1993, and was signed by Fankhanel and Smania.

7. An objection to a Notice of Appearance of Gregory M. Wilson, Esq., was served in the appeal on or about August 16, 1993. Smania signed the objection and stated in that objection that "the fees of Legal Reform Practitioners Smania and Fankhanel have just gone up".

8. On September 16, 1996 a hearing was conducted on the Petitioner's Motion for Partial Summary Judgment in which the undersigned Referee determined that there were no genuine issues of material fact as described in the above report.

III. CONCLUSIONS OF LAW

Based on the foregoing findings of fact, which the undersigned Referee has found by clear and convincing evidence, the undersigned makes the following conclusions of Law:

1. In their Notice of Appearance, Memorandum of Law and Affidavit for Appointment of Counsel in the dissolution, Fankhanel and Smania prepared and filed legal documents for third persons, which constitutes the unlicensed practice of Law. *The Florida Bar v. Schramek,*

606 So.2d 979 (Fla 1993); *The Florida Bar v. Brumbaugh*, 355 So 2d. 1186 (Fla 1978).

2. Numerous pleadings were signed and filed by Fankhanel and Smania in the dissolution and the appeal, which were admittedly signed by "Legal Reformers" who were not licensed to practice law in Florida. As such, those pleadings were subject to being struck as being defective. See *Daytona Migis Corporation v Daytona Automotive Fiberglass, Inc.*, 417 So.2d 272 (Fla 5th D.C.A.1982) and *Nicholson Supply Company v. First Federal Savings and Loan Association of Hardee County*, 184 So 2d 438 (Fla 2nd D.C.A 1966)

3. Although well intentioned, the aforementioned pleadings could result in harm to litigants in the future who could rely on Smania's and Fankhanel's advice, representation and assurances. *The Florida Bar v. Mandel*, 417 So 2d 647 (Fla. 1982)

4. Respondent Fankhanel's publishing of and speech in the "Journal" are protected free speech under the First Amendment to the United States Constitution and Article I, Section 4 of the Florida Constitution.

RECOMMENDATIONS

Based on the foregoing findings of fact and conclusions of law, the recommendation of the undersigned Referee is as follows:

A. That the Respondents Carolyn Fankhanel and Mary Ann Smania, be found to have engaged in the unlicensed practice of law in the State of Florida.

B. That the Respondent's Carolyn Fankhanel and Mary Ann Smania, be restrained and enjoined from:

1. Appearing in court on behalf of others other than as a witness.

2. Drafting, signing or filing pleadings or Memoranda of Law for others.

3. Giving legal advice for compensation.

4. Engaging in the practice of law in the State of Florida in any other manner, until such time as the respective Respondent is duly licensed to practice law in this State.

C. That the restraining order be issued in such fashion as not to conflict with the publishing of news journals, periodicals or other forms of free speech.

D. That the costs of this proceeding not be taxed against the Respondents.

DONE AND ORDERED at Orlando, Orange County, Florida this ___ day of ___, 1997.

ORIGINAL SIGNED

MAR 21 1997

ROBERT M. EVANS
Circuit Judge
ROBERT M. EVANS, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the foregoing Report of Referee has been mailed to SID J. WHITE, Clerk of the Supreme court of Florida, Supreme Court Building,

Tallahassee, Florida 32301, and that copies were mailed by regular U.S. Mail to Mary Ellen Bateman, UPL Counsel, The Florida Bar, 650 Apalachee Parkway, Tallahassee, Florida 32399-2300 and that copies were mailed to: Barry W. Rigby, Branch UPL Counsel, The Florida Bar, 880 North Orange Avenue, Orlando, FL 32801, Carolyn Fankhanel, P.O. Box 7352, St. Petersburg, FL 33734 and Mary Ann Smania, 3214 N.W. 22nd Avenue, Oakland, FL 33309 this 21st day of March, 1997.

/s/ DEBORAH ROACH
JUDICIAL ASSISTANT

IN THE SUPREME COURT OF FLORIDA
Case No. 85,818

The Florida Bar,
Complainant/Counter Respondent

v.

Mary Ann Smania,
Respondent/Counter Complainant

SMANIA'S OBJECTION and MOTION TO ~~STRIKE~~ DISMISS [MAS] THE FLORIDA BAR'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND IN THE ALTERNATIVE SMANIA'S MOTION FOR SUBPOENA POWER EQUAL IN STANDING TO THE FLORIDA BAR

COMES NOW Legal Reform Practitioner, Mary Ann Smania, Pro se, pursuant to those rights as guaranteed by the First Amendment protecting peaceful conduct assumed for purposes of political protest, and objects to The Florida Bar's Motion for Partial Summary Judgment against Smania and motions this Court to dismiss said motion and to acknowledge that Smania has subpoena power equal in standing to the Bar and states for grounds as follows:

1. On June 28, 1995 Smania was served with a "Show Cause Order" issued by **THE FLORIDA SUPREME COURT** which had **adjudicated** certain conduct assumed by Smania to be The Unlicensed Practice of Law (Exhibit A) but proudly claimed by Smania two years prior as conduct consistent with the legal doctrine

of Social Inevitability as established by The Florida Supreme Court in ***Rainey v. Rainey,*** 38 So2d 60.

2. On July 17, 1995 Smania politely asked the court to identify the hearing at which this mysterious adjudication took place and claimed that it was the Florida Bar, (which is acting as agent for the complainant in the instant litigation), who was not licensed to act with the unbridled/illegal authority it has become accustomed to in the courts.

a. Specifically, Smania answered the order to show cause and voluntarily gave the Florida Supreme Court jurisdiction to hear this matter because Smania **agrees** with the political position of the Florida Supreme Court and the Florida Bar that the public must be protected from the harm which is inflicted upon it through the unlicensed practice of law.

b. The dispute of material fact arising from Smania's response to the show cause order is that Smania and The Florida Bar disagree as to **who** has practiced law without proper license/authority in the context of litigation which has come to be known in the general population as The Vaughan Case. (Smania will not venture to say what the Vaughan Case is called privately by the legal professionals but suffice it to say that it is litigation which has achieved much public notoriety and does not need to be rehashed here)

3. As you know, or should know (since you are all attorneys), a summary judgment cannot be granted if there is a genuine issue of material fact which arises between the parties.

a. Unlike her colleague, Carolyn Fankhanel, whose attorney "admitted" to certain behaviors which could be construed as the unlicensed practice of law but would be protected under the Good Samaritan Doctrine, Smania has always maintained that her involvement in the Vaughan case has not only been authorized by the parties but is also protected and **encouraged** by the spirit embodied in our First Amendment. (See Counterclaim)

b. The fact is that Smania has yet to find out who the actual complainant is in the instant case and through what process the current administration of The Florida Supreme Court authorized itself and the Florida Bar to ignore a legal reform doctrine established by a previous administration of the Court which Smania clearly identified for the Court's consideration when she filed her Notice of Appearance. (Exhibit B)

OBJECTION and MOTION TO DISMISS

4. On June 30, 1996 *The Sun Sentinel* (Fort Lauderdale, FL) published an extremely timely cartoon in its magazine section which I consider apropos to the instant argument. It showed the "founding fathers" sitting around a table with quills and papers importantly in hand and one of them stating to the others: "How about three branches of government, with only two of them relevant?" For purposes of argument I would extend the dialogue to: " . . . and the third just a benevolent monarchy."

a. In its Motion For Partial Summary Judgment, paragraph 4.A, the Bar states that Smania, pursuant to the

language in her Notice of Appearance, "**admits** she is not an attorney". (Emphasis added)

b. **EXCUSE ME FOR OBJECTING HERE BUT I AM PERFECTLY CAPABLE OF SPEAKING ENGLISH AND I DID NOT "ADMIT" ANYTHING PURSUANT TO THE LANGUAGE IN EXHIBIT B OR IN ANY OTHER DOCUMENT PROPOUNDED BY THE BAR AS EVIDENCE OF UPL. AS A MATTER OF FACT I PROUDLY ASSERTED THAT I WAS NOT, AM NOT, AND NEVER WILL BE AN ATTORNEY. THE REASON BEING IS THAT MARY ANN SMANIA DOES NOT WANT TO BE AN ATTORNEY AND DOES NOT PRACTICE LAW.**

c. At the risk of sounding redundant, Mary Ann Smania is a practitioner of legal reform. Please look at her signature in exhibit B wherein she asserts she is a non-attorney legal reform practitioner whose activity was loosely organized under the heading of the Contempt of Court Club. Also, pursuant to the text in Exhibit B, she clearly identified to the court that she was a "seasoned" political activist standing in opposition to the court's interpretation of a Florida Statute, specifically F.S. 744.3215 (4)(c), who had no intent of "praying, begging, or pleading" with the court in order to be heard.

d. The Florida Bar continues to violate Smania's First Amendment right to peacefully engage in speech and conduct intended to influence interpretation of the "law" in the judicial branch of government. If Smania would **admit** to anything in the context of the instant litigation it would be that in her role as a legal reform practitioner she has had to be intentionally provocative

and assume certain outrageous conduct in order to be taken seriously by the court and have a position of influence equal to that of her opponent, The Florida Bar. However, attitude is not illegal so Smania continues to refuse to use the word **admit** and continues her objection to The Florida Bar's continued efforts to entrap an unsophisticated pro se litigant, such as herself, into using legalese, which is a foreign language to Smania.

e. Pursuant to the doctrine as established in ***Rainey,*** the question is raised here as matter of fact:

Can The Florida Bar, a privately funded, politically organized association, use its position within the Judicial branch of government to enjoin the conduct of visible political activism which is contrary to the interests of its members, without violating Smania's First Amendment rights?

f. The answer is "no". As established by The Florida Supreme Court in ***Rainey,*** if the members of the bar do not do their job, non-members will do it for them and will have a right to be compensated for their efforts.

g. Also, the court must consider now the fact that Ms. Fankhanel is no longer co-counsel in the Vaughan litigation. Smania has been joined, as a political activist, by Mrs. Norma Vaughan, who is a named party in the Vaughan litigation and who has submitted an intervention in the instant litigation.

5. The adjudication of Smania as a person who is unauthorized/unlicensed to assume behaviors and engage in conduct alleged to be the sole property of the

Florida Bar was/is, at best, premature. The Florida Bar's Motion should be denied.

MOTION FOR SUBPOENA POWER EQUAL IN STANDING TO THE FLORIDA BAR

6. In its accompanying Memorandum The Florida Bar asserts that "it is well settled that a nonlawyer" cannot engage in certain conduct and then goes on to list three cases which allegedly support its argument.

7. It is "well settled" by whom? Smania wants to depose the claimant and others who have visibly acted as the accusers and have "found" Smania's visibility as a political activist and the fact that she proudly signs her name to her work within the context of litigation to be "particularly egregious". (No, Marcia Clark is not one of Smania's targets) From the Bar's argument, it appears that Smania would not have been charged with UPL if she hadn't signed her name or otherwise appeared as an entity in the Vaughan litigation.

a. Additionally, in its argument, the Bar **"admits"** (I'm sorry, but I just can't help myself sometimes) that the documents signed by Smania and Ms. Carolyn Fankhanel, are "substantially more complicated" than simple forms and "require much more legal skill" to produce.

b. Is the Bar implying that legal reform activists should only operate as anonymous agents for the disenfranchised and remain strictly at a subversive level to the court. (It sure sounds that way?)

c. The Bar's argument goes on to say that "Pleadings or papers signed by nonlawyer non-parties are

defective and subject to being stricken". Why? Well, obviously its not what you say, but who says it that's important in the Judicial Branch of government. As you know, or should know, since Smania pointed this out in her counterclaim, this philosophy is totally inconsistent with the United States Supreme Court opinion as cited in ***Sperry v. Florida,*** *373 US 379, 402 (1962).*

d. The cases cited by the Bar are nothing more than shameful attempts to support the 5th District Court of Appeals' decision to strike Smania's and Fankhanel's signatures and any documents on which their signature appeared in the context of the Vaughan litigation. Obviously, these judges do not want to be deposed or answer to anyone, particularly the public, in the context of the instant litigation.

d. For God's sake, look at what you are doing. Consider the words of William Diehl from his novel, *Show of Evil,* 1995, Gunn Productions, Inc. pages 388-389, " . . . The only way for the law to remain strong is if we constantly attack its weaknesses . . . [Instead] it doesn't have a damn thing to do with the courtroom. It has to do with acting. The courtroom has become the theater of the absurd . . . [and] the truth gets lost in the shuffle".

b. Furthermore, the Bar, besides functioning as an agent attempting to neutralize the alleged unconstitutional act of the Fifth District Court of Appeal (See ***John Doe v. The Supreme Court of Florida and The Florida Bar,*** No. 88-8477-CIV., United States District Court, S.D. Florida, 1990), is attempting to establish litigation as a technical set of prescribed behaviors which can only be articulated by members of the Bar. Smania, on the other

hand, sees litigation as a constructively expressive art form which requires not only intellectual skill but also a profound respect for the court as an arena of intellects engaged in sociologically significant dynamic debate. Basically, the Bar's memorandum is prejudicial against any and all pro se litigants and its stance needs to be scrutinized, particularly since all the administrators of the court are members of the Florida Bar and do not seem to appreciate Smania's refusal to color within the lines and argue like a lawyer.

Thomas W. Sokolowski, director of the Andy Warhol Museum, said it best when he commented on the statewide juried exhibition at The Ringling Museum of Art, Sarasota, Florida, May 24, 1996 to September 1, 1996.

> At the end of the current millennium, it is especially crucial to find a place for art within our society. Only art has the dual luxury and responsibility to set humanity on the right path for the future. As gadflies, artists can tell us what we don't want to hear unfettered by laws and decorum. Given the present climate, never have gadflies been more necessary. The artists included in the [juried exhibition] chose many modes of creation and are not bound by any particular stylistic creed. In some, they again provide vectors for the future, vectors that are lush, plangent, and oftentimes profound, but most of all, **pertinent!**

Therefore, Smania respectfully requests that the Florida Bar's Motion for Partial Summary Judgment be dismissed with prejudice and Smania be granted the same

standing for purposes of discovery as the Bar in the instant action.

Respectfully submitted,

/s/ Mary Ann Smania
Mary Ann Smania, Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was furnished this 8th day of July, 1996 to The Florida Bar, c/o Barry Rigby, 880 N. Orange Avenue, Orlando FL. 32801 and John Berry, 650 Apalachee Parkway, Tallahassee, FL. 32399.

/s/ Mary Ann Smania
Mary Ann Smania, Pro Se
3214 NW 22nd Avenue
Oakland Park, FL 33309
(954) 486-1961

copies:
Referee
Carolyn Fankhanel
Norma Vaughan

Supreme Court of Florida

TUESDAY, JUNE 13, 1995

THE FLORIDA BAR Complainant, vs. MARY ANN SMANIA, Respondent.	*	ORDER TO SHOW CAUSE CASE NO. 85,818 (Filed June 28, 1995)

The Florida Bar having filed its Petition Against the Unlicensed Practice of Law charging respondent, Mary Ann Smania, with engaging in the unlicensed practice of law in the State of Florida, said respondent shall show cause, if there be any, why she should not be enjoined from the unlicensed practice of law alleged, and further requiring the respondent to file with the Court and serve a copy upon Barry W. Rigby, Branch Unlicensed Practice of Law Counsel, within twenty (20) days after service of the order to show cause a written answer admitting or denying each of the matters set forth in the petition.

/s/ Sid J. White
Clerk of the Supreme
Court of Florida.

A True Copy [SEAL]

TEST:

/s/ Sid J. White
Sid J. White
Clerk, Supreme Court

KBB

cc: Mr. Barry W. Rigby, Branch UPL Counsel
Ms. Mary Ellen Bateman
Mr. John A. Boggs
Mr. Martin J. Sperry
Ms. Mary Ann Smania
(for service)

Supreme Court of Florida

WEDNESDAY, NOVEMBER 22, 1995

THE FLORIDA BAR, Complainant, v. MARY ANN SMANIA, Respondent.	* * *

The order on consolidation entered on August 30, 1995 is amended to read as follows: The Florida Bar's Motion to Consolidate is hereby granted and the above causes are consolidated.

GRIMES, C.J., OVERTON, SHAW, KOGAN, HARDING, WELLS and ANSTEAD, JJ., concur.

A True Copy [SEAL]

TEST:
/s/ Sid J. White

Sid J. White
Clerk Supreme

KBB
cc: Mr. Barry W. Rigby
Ms. Mary Ellen Bateman
Mr. John A. Boggs
Mr. Martin J. Sperry
Ms. Linsey Moore
Ms. Carolyn Fankhanel
Ms. Mary Ann Smania

IN THE SUPREME COURT OF FLORIDA
CASE NO. 85,818

The Florida Bar,
Complainant and/or Petitioner,

vs.

Mary Ann Smania,
Respondent

Mary Ann Smania,
Counter-Complainant,

vs.

The Florida Bar,
Counter-Respondent

Simultaneous Filing of Corrections to Counterclaim

Comes now, Reformer Smania, who simultaneously files her counter claim and interweaves the following "corrections" to said counterclaim and explains:

1. Smania is simultaneously filing a document which contains error. The errors were discovered by Smania after the document had been printed and bound.

2. Due to time limitations and a mal-function of Smania's word processor, which rejects the double space command, (probably because Smania writes so much), the "final production" of the "counterclaim" was edited, proof read and printed without final review by Smania, who was only able to pick up the document on Sunday, July 16, 1995.

3. Since Smania has no entry to the computer file and cannot correct the error, which is more than "typos",

she has decided this is the most practial [sic] way of "correction".

4. In a summary of the work by Barlow F. Christensen which sets forth an academic historical perspective of UPL enforcement, beginning on page 6, Smania attempted to reflect the phases of change as Christensen categorized them. Essentially he perceived UPL prosecution as originating in the influential wealthy class of early American colonists who had too much to lose if challenged by people who were dedicated to raising moral issues regarding profits. He then went on to categorize the phases of change in the legal profession's concept and conduct regarding UPL. However, in an effort to make "my" summary smoother, the editor inserted an extra phase which was not classified as such by Christensen. In my text of the instant case, Phase II of the summary should actually be incorporated into phase I. Christensen also did not quote Milton Friedman.

5. Beginning on Page 13, #15b(3) and c have been crossed out by Smania. In an effort to "tighten up" my discussion of pro se ideology, legal reform, and the "Unclean Hands Doctrine", I'm afraid the spirit of my argument was lost. I cannot think of a more practical way of amending the document than to just simply submit that the following shall replace said paragraphs:

(3.) Any other person is authorized to be a pro se litigant. However, pro se litigancy is not synonymous with legal reform. Nor is every ideology of legal reform compatible with Reformer Smania's ideology. Unlike some of the more extreme sectors of the legal reform constituency, who believe that the legal profession itself is inherently evil, Reformer Smania believes that the

profession has "lost its marbles", so to speak, and thereby has lost its abilities to debate issues intelligently. Also, this "mental deterioration" establishes an arena in which the tyrannical, destructive and corrupt aspirations of certain Florida Bar members are articulated in judicial decisions which make no sense to the average person who still believes we are living in a society governed by principles of democracy. Pursuant to exhibit A, Reformer Smania believes that most people do not want to be pro se in a court room.

c. Reformer Smania asserts that the Florida Bar comes to *THIS COURT* with "unclean hands" and is operating in an "unconscious conspiracy". It has had over a century to develop an intelligent, progressive evolution of thought toward the concept of UPL and yet it refuses to engage in intellectual debate with serious minded legal reformers. Instead it harasses and persecutes those "outsiders" who are perceived as encroaching on the Florida Bar's turf. Well, move over, because there's a new kid on the block.

I hereby certify that I have mailed a true and correct copy of the foregoing on this 17th day of July, 1995, in the same package with Counter-claim, to Barry W. Rigby, 880 N. Orange Ave., Orlando, FL. AND John Berry, 650 Apalachee Parkway, Tallahassee, FL 32399 (Please note Mr. Berry was not identified as an addressee in my original document.)

/s/ Mary Ann Smania
Mary Ann Smania, Pro Se
3214 NW 22nd Ave.
Oakland Park, FL 33309
(305) 486-1961

IN THE SUPREME COURT OF FLORIDA
CASE No. 85,818

THE FLORIDA BAR,

Complainant and/or Petitioner,

vs.

MARY ANN SMANIA,

Respondent

MARY ANN SMANIA,

Counter-Complainant

vs.

THE FLORIDA BAR,

Respondent

COUNTERCLAIM AND MEMORANDUM OF LAW

Comes now Legal Reformer, Mary Ann Smania, hereinafter called Reformer Smania, Pro Se, pursuant to an "Order to Show Cause", alleged to be a legal order issued by The Florida Supreme Court, and charges The Florida Bar, whose members include, but are not limited, to Sid J. White, Clerk of the Supreme Court of Florida, and the Justices themselves, with unconscious conspiracy to deprive Reformer Smania of her expressive rights as guaranteed under the First Amendment of the United States Constitution and Article 1, Section 4 and 21 of the Florida Constitution and states for cause as follows:

1. On June 28, 1995 at approximately 1:07 p.m. Reformer Smania was served with a document which style reflected that The Florida Bar, as a "petitioner", was

"charging" Reformer Smania with the unlicensed practice of law. The petition, which was alleged to have been submitted for filing by The Florida Bar and allegedly filed on June 5, 1995 by the Clerk of the Supreme Court of Florida, Sid J. White, was accompanied by an "Order" which identified The Florida Bar as the "Complainant" and Reformer Smania as the Respondent. The order was allegedly signed by the Clerk of The Florida Supreme Court, Sid J. White, the same person who filed it. The purported signature consisted of the typed letters and symbols: "/s/ Sid J. White."

2. Excuse me, but has Reformer Smania missed something here, like a hearing, or a trial, or something else which would acknowledge that Reformer Smania is not an invisible litigant subject to judicial orders which are not even signed by a judge or a person?

3. However, out of respect for those members of The Bar who are sincerely interested in advancing their knowledge base regarding UPL and who are striving to maintain the integrity of their profession, Reformer Smania will provide a "written answer". But it's not going to be what you expected.

4. Reformer Smania's answer is a counterclaim based on what she calls "The Unconscious Conspiracy Theory" as academically set forth, in Thomas Morgan,*The Evolving Concept of Professional Responsibility*, 90 Harvard L. Rev. 702 (1977).

5. Mr. Sid White, and other members of the Florida Bar, including, but not limited to, Mr. Barry W. Rigby, Ms. Mary Ellen Bateman, Mr. John A. Boggs, Mr. Martin Sperry, Mr. William F. Blews, Mr. John A. DeVault III, Mr.

John F. Harkness, and Mr. John T. Berry, have unconsciously conspired to deprive Reformer Smania of her first amendment right to engage in speech and conduct intended to peaceably persuade the legal profession to re-establish its primary goal as "the public interest in seeing justice done". They, and others not yet identified, have engaged in this "unconscious conspiracy" in order to maintain the interest of the "lawyers themselves" as the Florida Bar's primary goal.

6. The Florida Bar continues to violate Reformer Smania's right to engage in said speech and conduct, as evidenced by its shameless attempt to intimidate Reformer Smania through an "Order to Show Cause" written on the letterhead of the Florida Supreme Court and signed by a typewriter.

7. The unconscious conspiracy theory as set forth in 1977 by Thomas Morgan has never been accepted, to this litigant's knowledge, as legal doctrine, so Reformer Smania is again performing a service of legal reform and asserts her right to engage in speech and conduct which she identifies as belonging to sincere legal reformers. (Exhibit A)

8. The thrust of this counterclaim which is grounded in Reformer Smania's expressive right to engage in speech and peaceful conduct, is that she is being forced to respond to a judicial order which violates the best interest of the public and serves only the short term interests of the lawyers themselves.

9. According to Morgan, "The American Bar Association's Code of Professional Responsibility begins with

a promise of helping lawyers achieve an understanding. . . . of their relationship with our legal system. It closes with the solemn admonition that every lawyer strive to avoid not only professional impropriety but also the appearance of impropriety . . . So long as its practitioners are guided by these principles the law will continue to be a noble profession." The Rules of Professional Responsibility have replaced the Code, but I will continue to use Morgan's older term.

a. Morgan goes on to describe how the Code is under attack as being a conspiracy. He then argues that, if a conspiracy exists, it is "not conscious". Therefore, it can be remedied through reform in which the profession itself reorders current priorities to return to the interests for which it was established.

b. There are four interests within the Code which he states are effectuated by profession conduct. They are not necessarily mutually exclusive and are prioritized in his order of importance as:

(1). The public interest in seeing that justice is done. Reformer Smania does not feel that this "goal" or "interest" needs explanation and that even licensed practitioners and Supreme Court Justices understand what this means.

(2). The goal of expeditious dispute resolution at the lowest possible practical cost. This is not necessarily an interest regarding time and money. Morgan's concept is probably best summarized in his statement "Social

costs involved are borne by society as a whole." Essentially, if the judiciary screws up, society as a whole suffers, and so the Code requires that professional attention be paid to evolution of improved procedures.

(3). The interests of the attorney's client must be served. This, or course, is an interesting predicament for those attorneys who have clients whose interest are not synonymous with the public interest.

(4). The interest of the "lawyers themselves" to make a good living. Surprise! Reformer Smania agrees that ethical, competent attorneys should make a good living. Unfortunately, there are not enough of them to fill the Bar's Committee on UPL. Just kidding! (I think!)

c. As Morgan points out, the interests should be prioritized in the order set forth above. Instead, attorneys are functioning under a code enforcement structure which has "~~things~~ thinks backwards". The needs of the "lawyers themselves" to make a good living come first. (Concept generally discussed in Morgan, p. 702-716) Reformer Smania would say that professional ethics have deteriorated to such a point that most of the time many members of the Bar act as if the three other goals don't even exist.

d. One of the code standards which Morgan asserts operates primarily for the benefit of the "lawyers themselves" is the prohibition of the "unauthorized practice of law".

10. Therefore, in the spirit of legal reform, Reformer Smania asserts that the "Order to Show Cause" signed by a typewriter, on Florida Supreme Court stationery is a

result of an unconscious conspiracy to protect the interests of The Florida Bar members only. Essentially, Reformer Smania is not going to "admit" or "deny" anything pursuant to said order, since to do so would be to perpetuate the conspiracy. Each section, of The Florida Bar's petition, will be addressed as part of the counterclaim alleging conspiracy.

I

11. Reformer Smania challenges Allegation I, asserting that The Florida Bar cannot legally file a petition pursuant to rule over which non-members of The Bar have no input. This is a perfect example of how the unconscious conspiracy operates.

a. On January 30, 1995 The Florida Supreme Court denied, in final judgment, the right of a non-member legal reform activist to have input into proposed amendments of the Rules Regulating the Florida Bar. As you know, or should know, under Case #84,322, Ronald Eubanks, DBA Lawyer Complaint Service, petitioned the Court to amend The Rules Governing The Florida Bar on behalf of over 300 "victims" he had assisted in filing complaints against attorneys. Eubanks alleged to have been "appalled" by what he heard regarding the activity of The Bar and its members. He wanted The Supreme Court of Florida to "hear", for itself, what was going on in the legal profession in Florida. Evidently, the Court did not want to hear what was going on. The Court did not allow this non-member input regarding the Rules Governing The Florida Bar. Reformer Smania asserts that

when the Florida Supreme Court denied Eubanks petition, it also gave up The Bar's right to bring an action against non-members directly into any court pursuant to its own rules.

The operation of this unconscious conspiracy inconsistent with democratic principles is explained here by way of analogy. Compare the rules governing a condominium association and those governing The Bar. If a non-member of a condominium association petitions the association to "buy into it" and is denied, the condo association cannot bring an action in any court against the non-member based on its own rules. Therefore, when the Florida Supreme Court denied Eubanks' petition, without opinion, it essentially "barred" non-members from "buying into the bar". You see, Florida Bar members always have the option of withdrawing from the Bar so as not to be governed by its rules, but non-members cannot withdraw from something they have been barred from in the first place. The order of the Florida Supreme Court reflected official disdain for non-member input into the Rules Governing The Florida Bar. Therefore, like the Condo Association, non-members of the Florida Bar can not be charged with a violation pursuant to a rule of an organization of which they (including the respondent) are not members.

b. Assuming that, ARGUENDO, the Supreme Court does have the power to promulgate provisions regarding UPL, Chapter 10, titled "Rules Governing THE Investigation and Prosecution of the Unlicensed Practice of LAw", certainly does not logically belong in "Rules Regulating The Florida Bar". The unconscious conspiracy to deny

non-members their constitutional rights has even prevented the progressive evolution of thought within the Bar. Consider as evidence the intelligent description of the evolution of the professional movement to restrict UPL provided by Barlow F. Christensen, *The Unlicensed Practice of Law: Do Good Fences Really Make Good Neighbors – Or Even Good Sense?*, 1980 Am Bar Fnd Rsch J 159. My summary of his article follows:

Phase 1

Christensen hypothesizes that some of the earliest attempts to restrict UPL did not emanate from any "lawyers's group". Rather, a section of the wealthy used UPL as a tool to squelch "troublesome suits" against established interests and powerful constituencies. In 1680, after much political debate, the Virginia Assembly finally allowed "mercenary attorneys", i.e., uneducated do-gooders, to practice law under rigid restrictions. However, as use of common law principles increased, judges and lawyers needed to be versed in its intricacies and this need produced professional practitioners. (Concept generally discussed in pages 161-165).

Phase 2

Christensen relies on Charles Warren, *A History of the American Bar 5* (Boston: Little, Brown & Co., 1911), pages 212-219, to summarize the reaction of the public to the "practice of law" in the next century. By the mid 1800's "[some] communities. . . . demanded the complete abolition of the legal profession." (Page 171, as quoted from Warren). "In the 1840's, a few states eliminated *all*

requirements for admission to the Bar, except good moral character . . . *Formal* restrictions disappeared, but the market for legal services remained, a harsh and efficient control." L.M. Friedman, *A History of American Law* (1973) at 277-278.

Phase 3

Christensen identifies the period from 1870 to 1920 as the "begining of the modern unauthorized practice movement" when the legal profession "wedded" the public interest to its own private interest. (Generally discussed in pages 175-188). He hypothesizes that the concern for overcrowding within the profession was accompanied by a concern for outside competition, particularly business corporations practicing law and in-house corporate legal departments. This was not only evidenced by the litigation going on during that time, but also the literature. According to Christensen, at least one state bar committee on overseeing UPL called itself "The Committee on Corporations Practicing Law." (page 178)

Phase 4

From 1920 to 1960, there were minor changes in concept but major changes in how the various bar groups organized to restrict UPL. Generally discussed under the title of "The Profession Rampant" (Pages 189-197), Christensen identifies that the most significant UPL litigation dealt with "lay intermediaries", such as labor unions and civil rights organizations, which provided lawyers for their members. During this period the state bars also negotiated with other professions to secure agreements

about what activities constituted the practice of law. Because institutions, such as banks and big business, have an interest in preserving the "good will" of the legal profession, which "Clearly has the courts on its side", and since they also want to avoid harassment and other such attacks by the legal profession, the various bars were "very successful" in restricting UPL.

Phase 5

However, from 1960 to "the present", (1980) the attempt to restrict UPL took a new direction in which the legal profession became a defendant and the voice of the people became stronger. Generally discussed in pages 197-201). Cases were filed under the anti-trust laws and even the Justice Department commenced anti-trust investigations regarding the negotiations between professions to decide what constituted UPL. Also, landmark decisions in which First Amendment rights prevailed over state UPL laws were made.

Christensen concludes his very fine article with possible directions for the profession's campaign against UPL and suggests that "perhaps the legal profession is sufficiently mature to forgo the crutch of [self] protective laws." (p. 214)

II

12. Reformer Smania challenges Allegation II and asserts that NO court has original or exclusive jurisdiction to prohibit speech or conduct which peacefully contributes to the public interest. Allegation II usurps

Reformer Smania's right to engage in political speech and conduct intended to peaceably reform a self-serving legal profession. It violates Article I, Sections 1 and 4 of the Florida Constitution as well as Smania's rights as established by the First Amendment. It was constructed solely for purposes of perpetuating the interests of "the lawyers themselves" over the public interest.

a. Article 1, Section 1 of the Florida Constitution states that "All political power is inherent in the people. Section 4 dictates that "No law shall be passed to restrain or abridge the liberty of the speech or the press." In the year 1925, the Florida Legislature enacted Florida Statute 454.23, which prohibited the unauthorized practice of law. (See Laws, c10175 Sec.21) In 1971, the statute was amended and in 1974 it was further amended to the "law of the land" known as Florida. Had an action been brought pursuant to this statute, a jury would have laughed this case right out of a courtroom. Indeed, two farsighted judges in the County Courts of Santa Rosa and Escambia Counties have held said UPL statute unconstitutionally vague. See *State v. Scott Foster*, Case No. 94-2809-MMA (February 9, 1995) and *State v. Martha Jean Foster*, Case No. 94-22137-MM-B (June 12, 1995). However, since the Florida Bar has no sense of humor, it pursued an action based on an incestuous relationship with the Florida Supreme Court. Perhaps the better metaphor is an adulterous relationship, wherein the Florida Supreme Court is lawfully wedded to the public but is really in bed with the Florida Bar. Allegation II is nothing more than a feeble attempt to perpetuate a process which hides the debate from public scrutiny and strengthens the unconscious conspiracy.

b. Reformer Smania suggests that all ethical and competent attorneys read *Rainey v. Rainey, 38 So2d 60* for an intelligent opinion rendered previously by the Florida Supreme Court dealing with the issue of UPL. In dictum, the court took the realistic view that UPL is inevitable when licensed attorneys do not act in the public interest.

III

Reformer Smania challenges Allegation III and asserts that at no time could the petitioner initiate any proceedings pursuant to any internal rules to prosecute the unlicensed practice of law.

a. The notorious Chapter 10 illegally endows the Florida Supreme Court with "inherent jurisdiction" to prohibit UPL. As previously discussed, the inherent power belongs to the people pursuant to the Florida Constitution. Also, the Rules imply that a complaining witness or "witnesses" **initiate** action and The Bar considers, investigates, and decides on the proper action. See Rule 10-2.1(c). Reformer Smania asserts that when she engages in speech and conduct protected by the First Amendment, the Bar cannot simply classify said speech and conduct as "unlicensed" and initiate prosecution in the Florida Supreme Court. If the Bar had such unbridled authority legally, this would be analogous to the authority granted to the Gestapo by a Nazi Government. The claim of the Bar to have this authority is a usurpation of power from the people. It is nothing more than a product of the unconscious conspiracy to perpetuate the interest of the "lawyers themselves" as prevailing over the public interest.

b. It should be noted that Reformer Smania does not deny the State's interest in protecting the public from harm which results from the unlicensed practice of law. Indeed, based on significant errors in the instant petition, the State has an interest in protecting the public from the harm caused by unauthorized practice, including that of the attorneys representing The Florida Bar. In case there is a discrepancy in concept, the Bar has admitted that the word "unauthorized" is synonymous with the word "unlicensed" as evidenced by the Florida case law it used to support this "unlicensed" practice of law prosecution. However, pursuant to its definition of the "unlicensed" practice of law, as set out in Rule 10-1.1, the Bar only acknowledges "statute, court rule, and case law of the State of Florida".

Hellooo out there in legal land, but other relevant law exists. For instance, see *Sperry v Florida ex rel. Florida Bar 373 U. S. 379, 402 (1962)*. For some reason, this U.S. Supreme Court decision was omitted from the citation of *The Florida Bar v. Sperry*. The United States Supreme Court vacated the Florida Supreme Court's decision. The Bar also failed to cite the final decision in *Sperry*, at *159 So2nd 259*. And so the conspiracy continues to perpetuate itself through incestuous application of unreliable Florida case law and usurpation of the power from the people.

c. Reformer Smania asserts that her services are badly needed by The Florida Bar.

IV

14. Reformer Smania challenges allegation IV and asserts that the order signed by a typewriter is inconsistent with the spirit of due process.

a. A superbly intelligent analysis of the behaviors of ~~by~~ state bar committees in restricting UPL is provided by Deborah L. Rhode, *Policing the Professional Monopoly: A Constitutional and Empirical Analysis of Unauthorized Practice Prohibitions,* 34 Stanford L Rev 1 (1981).

Empirical Analysis

Rhode hypothesizes, that despite the lack of public support, the state bars are resistant to introspection and thereby promulgate doctrines of UPL which are "inconsistent, incoherent, and, from a public policy perspective, indefensible." (p.4-5) Her data base, which was derived from respondents in 55 jurisdictions throughout the United States, reflects that, although most UPL committees must first obtain approval to initiate civil proceedings, the respondents in her study characterized this requirement as a "mere formality". Also, there were no judicial decisions reported which rejected claims of UPL, which she attributed to selective enforcement by these committees.

Also, she found that there was a striking lack of consumer complaint about unlicensed practice, but the committees failed to recognize the public's lack of endorsement of UPL restriction. In footnote 124 she stated, "The respondent from Florida made the strongest claim of popular endorsement when he submitted that the public's 'simplistic reaction' was that lawyers were only 'trying to preserve our monopoly[' [sic] but that many consumers 'who reflect on our function applaud [it]'." In other words, he thinks most legal consumers are

unreflective (=dummies) but the more intelligent minority (most of whom are probably married to lawyers or otherwise related to them) are smart enough to appreciate the suppression of UPL. (Of course, he had to be from Florida). She concludes that "Consumer sentiment has not diminished Bar committee efforts" to restrict UPL.

Constitutional Analysis

In discussing Constitutional implications, she expressed astonishment at the states who embodied circular thinking in their UPL statutes and rules. Professor Rhode's analysis of constitutional implications of UPL prosecution includes a very brilliant discussion of case law. She summarized her view this way: "Unauthorized practice prohibitions plainly implicate first amendment values by restricting both the lay speaker's ability to convey information and the public's opportunity to receive it. If such restrictions impede access to the courts or the exercise of associational interests, further constitutional questions arise." (P.62)

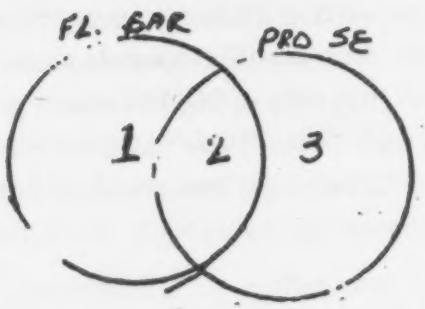
V

15. Reformer Smania does acknowledge that she was not and is not a member of The Florida Bar. This acknowledgement is made proudly. She is insulted when people tell her she should have been a lawyer and has considered suing the offending parties for defamation. She has not done so. Yet! However, she does challenge allegation V on the basis that at all times material she was authorized to represent the ideology of a pro se litigant in

a court of law or any other forum, regardless of whether or not she held a Bar license.

a. Reformer Smania is an "authority" on "authority". In 1972 she produced her first Master's thesis on the concept of "authority" used by staff nurses to rationalize spontaneous decisions made in a psychiatric setting. (Some of these concepts might help to rationalize the spontaneous decisions of the Florida Supreme Court made in a Bar setting. Therefore Smania's 97 page thesis is available on request, in the public's interest). This work was so good that she was offered and did, in fact, accept a faculty position at the University of Illinois Medical Center. She became an Assistant Professor at DePaul University even though she had no Ph.D. She went on to get a second masters at the U of I and then moved to the University of Chicago to continue her studies. Her area of interest in the Social Sciences was how professions articulate their "souls" through museums dedicated to the "celebration" of professional and occupational spirit. However, after she completed her course work and passed her prelims, Reformer Smania made the fatal mistake of moving to Florida. She never completed her dissertation. However, that has not stopped her from prolific writing.

b. There are two groups of people authorized/licensed to practice law in Florida.



(1.) Reformer Smania acknowledges that members of the Bar are authorized/licensed to practice law. However, as you probably know, there is a growing movement of legal reformers who insist that malfeasance constitutes unauthorized practice, whether done by a licensed attorney or a lay person. Membership in The Florida Bar should not give a license to commit white collar crime.

(2.) Members of the Bar may also be pro se litigants, even if they are not actively practicing law (such as attorneys who are in business or who are retired practitioners).

~~(3.) Any other person is authorized to be a pro se litigant. However, pro se litigancy is not synonymous with legal reform. Nor does every pro se litigant have an ideology identical to Reformer Smania's.~~

~~c. Reformer Smania, at this point, raises "The Unclean Hands Doctrine" as an affirmative defense and reserves the right to solicit amicus briefs from legal reformers with commensurate ideology.~~

[SEE CORRECTION]

d. Reformer Smania is not an attorney and has had only twenty days to organize her argument. Which raises

the question posed by Christensen, "Why is the [UPL] doctrine, which is traceable to colonial days, still seriously suspect?" (op. cit., p. 201) He then goes on to assert that there may be a "fatal flaw" in the UPL concept which the various bar groups do not want addressed, although some courts have.

Essentially, according to Christensen the lay intermediary cases in which groups, such as the NAACP, supplied legal assistance for their members and then were prosecuted for UPL by the various States, demonstrated that rules governing the practice of law must give way to the First Amendment rights of free speech assembly, and petition. He also suggests, that the courts, in their wisdom, and the people, in their wisdom, have demonstrated that there is a freedom of choice issue involved in the UPL concept. He cites the Arizona Constitution, Article 26, Section 1 (1910, amended 1962) and the Chicago Bar Assn. v. Quinlan and Tyson Inc., 34 Ill. 2d 116, 214 N.E. 2nd 771 (1966). Both instances authorized real estate professionals to practice law as it had been previously defined by the Bars in connection with real estate transactions. He asserts that the public's interest is in preserving its right to freedom of choice and that the public has a right to service that other professions and businesses have to offer, His unfavorable interpretation of the UPL Doctrine is, "Those services that we, the legal profession, define as 'legal' you may obtain from us – or not at all. . . . The time has come to let the public choose." (p. 202-214)

(2). Reformer Smania has attempted to get this freedom of choice issue addressed in the Third District Court of Appeals but, as most members of the judiciary will do

when a question requires intellectual energy, they weaseled out of it. (Exhibit B) Therefore, it is re-addressed here as: Can a pro se litigant, any pro se litigant, authorize any non-member of the Florida Bar to represent the litigant in any legal proceedings, what-so-ever, as inherent to the litigant's rights as guaranteed by the U.S. Constitution?

(3). Unfortunately the answer is generally "no" if Reformer Smania read a footnote correctly in one of the articles previously cited. Since Reformer Smania did not read the opinion on this question, which encompassed a number of cases consolidated into one Federal case, she will have to assume that the court decided unilaterally that the U.S. Constitution does not guarantee choice of representation. However, Reformer Smania is now preparing to argue two related issues in the instant case:

- **When a pro se litigant articulates, in a court of law, an ideology which is contrary to the interest of any Florida Bar Member, does that litigant have a right to authorize any non-member of the Bar, whether she be a disbarred attorney, an attorney from another state, or any other competent practitioner, to represent her in any legal proceedings as inherent to her first amendment rights?**

- **Does said litigant have the right to collect pro se legal fees equal to those chargeable by the Florida Bar members in comparable positions?**

(4.) Reformer Smania has attempted to address the issue of pro se fees in a case in which she put a notice of appearance as co-counsel to a pro se litigant, Carolyn Fankhanel. Unfortunately, as usual, instead of addressing

the issue in an intelligent manner, the judiciary weaseled its way out of this one also, even though the case was "won" by Fankhanel and Smania, acting as a team. (Exhibit C) However, Reformer Smania has been advised that there is case law to support her position based on the Venn Diagram incorporated herein. If attorneys who represent themselves "pro se" are awarded fees and costs, then the court cannot deny fees and costs to the pro se litigant without creating two distinct classed [sic] of people within an institution of government organized under democratic principles.

(5.) At this point Reformer Smania is not going to cite any case law to support the questions above. The questions would best be addressed through amicus briefs because the courts in the future are going to have to manage the rising constituency of pro se litigants who believe that all members of the Bar are the "Children of Lucifer". Reformer Smania has personal knowledge of at least one organization which calls itself a "church", The Church of the Avengers, who practice ritualistic activity and espouse such a philosophy. Also, it should be noted that The Church of the Avengers does not just limit its perception of evil to attorneys. However, the chief judge of the circuit where this alleged church is located barred "all" pro se litigants from filing in the court. Now really, is this the type of simplistic thinking you want to be remembered for when legal historians review this period in the legal profession's evolution.

(6). Reformer Smania states emphatically: **Stop the unconscious conspiracy! Answer questions intelligently!**

(7). As Professor Rhode so eloquently states. . . . "Litigation serves important expressive functions . . . Opportunity to litigate promotes both dignity and participation values. . . . It enhances self-respect and a sense of having one's will counted in societal decisions . . . Fundamental legal changes could result from greater citizen knowledge and participation . . . Given both the expressive and participatory values at stake, laymen who facilitate pro se actions have a strong claim to both constitutional and legislative protections . . . " (op. cit. p. 71-78)

VI

16. Reformer Smania challenges Allegation VI and asserts that all alleged UPL acts which are supported by exhibits (which, by the way, are not "pleadings" as defined in Rule 1.100(a) of Florida Rules of Civil Procedure, despite being identified as such in VI.3) are protected by The First Amendment. The Bar's attempt to classify such acts as "unlicensed" constitutes conspiracy. In fact, a conspiracy by a bunch of sore losers. Reformer Smania also challenges the legality of the Bar's composite exhibit D because it violates the writer's common law rights as to ownership of intellectual property.

a. As a matter of fact, Reformer Smania assumes full responsibility for producing two other documents (Exhibit D and Exhibit E) in order to assert her ideology. The conditions under which Smania had to write these documents were so stressful and so time-constrained that there was absolutely no opportunity to edit them or even mail them to the pro se litigant, Norma Vaughan, for

review. Reformer Smania not only wrote them, she drove from Miami to Orlando to deliver them to Mrs. Vaughan for signature, and she then drove Mrs. Vaughan to Daytona to file the documents. Why?

b. The practical answer is that the legal system turned its back on Norma Vaughan, who was in dire need of legal representation, a fact brilliantly portrayed in Attorney Linsey Moore's defense of Reformer Smania's co-counsel in the Vaughan case, Carolyn Fankhanel. (Exhibit F)

c. However, Reformer Smania's motivation in the Vaughan case was different from Ms. Fankhanel's. Reformer Smania did not know Mrs. Vaughan personally. She was motivated by horror after realizing that an entire local community of legal professionals, including the police department, were conspiring to protect the public image of a group of judges who should have been Baker Acted.

d. By the time Mrs. Vaughan finally was awarded paltry fees ($2500.00) to hire an attorney, the case was very complex because of the conspiracy. Average legal representation could not possibly have been effective enough to undo the judicial atrocity which had occurred. Reformer Smania has loaned money to Mrs. Vaughan, arranged for bail, talked with various attorneys regarding the representation of Mrs. Vaughan, wrote letters to the Governor and the Justice Department, spoke to the press, and stuck with Mrs. Vaughan through some terrible emotional crises. And she did this out of a shared ideology.

At the time she entered into this case, Reformer Smania had just lost her beloved long time companion,

Gustave Alexander DeCarlo. She knows that no court, no human being, no illness, not even death can separate two souls which have bonded together through love. The effort of the Orange County Circuit Court to encroach on the loving marriage of Norma and Buford Vaughan was an abomination I had to fight, regardless of the risk of UPL prosecution. (Exhibit H)

VII

17. Reformer Smania challenges allegation VII and asserts that none of the case law cited is relevant to this reformer's speech and conduct intended to reform the legal system. The feudal mentality demonstrated in the opinions of the cited cases is antithetical to democracy and progress.

The four defendants in the cited cases were conducting business which involved the use of their First Amendment rights as a means to a commercial end. Reformer Smania, on the other hand, through her lobbying, public relations, writing, pro se litigation, and her involvement in the pro se litigation of others, is using her expressive rights directly as a means to a political end, e.g. legal reform. She continues to engage in said speech and conduct consistent with her formal education, experience and ideology. The only potential for harm is to the sore loser conspiracy. She is two for two in the courtroom, she has been successful in her appearances before the legislature, and she has succeeded in getting entry to the mainstream media and has even appeared on numerous

talk shows and hosted her own T.V. shows for an organization called SCORN (Secure Condo Owner's Rights Now).

Additionally, the Florida Bar's instant petition has flagrantly violated the spirit of the law as described in Florida Rules of Appellate Procedure 9.800(n) by consciously eliminating the full citation in *Sperry*. See Rule 10.7, *A Uniform System of Citation*, 15th Edition (1991), requiring "Whenever a decision is cited in full, give the entire subsequent history of the case, including disposition in the U.S. Supreme Court". This omission is more than just a typo, which probably also explains the wrong citation to the page number in *Schramek*. The opinion of the U.S. Supreme Court, in which it vacated the judgment in *Sperry*, has two elements relevant to the instant case.

a. Essentially, the United States Supreme Court put the emphasis on competence rather than bar licensure when it credited the U.S. Patent Office for the following statement. "[There was] no significant difference between lawyers and nonlawyers either with respect to their ability to handle the work or with respect to their ethical conduct". This is not to say that the State or the Bar should not have an interest in developing criteria and maintaining standards of practice. However, as Professor Rhode points out, the legal knowledge standard is "absurd". What the court needs to decide in each particular case is the extent of legal knowledge (if any) called for. (op. cit. p. 79) Reformer Smania asserts that espousing a legal reform ideology and acting on it peacefully in the courtroom does not require a law degree.

Further support for this argument can be drawn from Christensen, who alludes to the time when the legal profession began organizing to restrict UPL but could not attack the competence of layment because the laymen were so specialized in their fields that they were better at what they did. So the legal profession began emphasizing the personal nature of lawyering and the special learning, moral character, and commitment to high ideals that only a lawyer could bring to a relationship with a client (op.cit., p. 188). Reformer Smania can barely refrain from editorializing on this one.

b. The other issue relevant in *Sperry*, to the instant case, as quoted from the United States Supreme Court in *Sperry* is that "Fundamentally, knowledge of the invention is more important than knowledge of the rules and is often possessed by men [sic] of a type of mind which does not acquire legal knowledge readily." Legal Reformer Smania sees this as an extraordinary thought for a group of judges. Essentially, it recognizes that an inventive mind is not the same as a legal mind and that neither is inferior to the other. Reformer Smania would also take this a step beyond patent law and say that legal reform requires a specialized type of mind which produces speech and conduct not easily incorporated by the legal mind. The language must be shocking, the insults must be enraging, the jokes must be humiliating, and the "pleadings" must be strident. This must be the way because the conspiracy is **unconscious** and reform can only be achieved by shaking up you "men" with "knowledge of the rules".

18. In the second sentence of allegation VII, The Florida Bar confuses the concept of "legal reform practitioner" and unlicensed or unauthorized practice of law. A legal reform practitioner **practices/does** legal reform. Reformer Smania lobbies, does public relations, writes, and litigates pro se, as well as actively participates in **select** pro se cases in court. The Bar's sloppy juxtaposition of "legal reform practitioner" and unauthorized/unlicensed practice of law, and conclusion that "her actions present the potential for substantial public harm", impose a chilling effect on the first four activities.

VIII

19. Reformer Smania challenges Allegation VIII and asserts that the signing of her name and listing her address as c/o The Contempt of Court Club constitutes absolutely nothing except to demonstrate that the legal profession is filled with self-serving, pompous individuals, who have no sense of the harm and destruction they are causing. The Bar's assertion is also illogical since UPL is only one of the thousands of types of contempt inherent in the public domain. Of course Reformer Smania knew what she was doing; she's not part of your unconscious conspiracy.

Therefore Reformer Smania submits the following:

1. That the Florida Supreme Court seriously address the First Amendment question and the issue of pro se fees, both for the pro se's effort and the work of the people assisting the pro se litigant, through an intelligent opinion.

2. That Chapter 10 of The Rules Governing The Florida Bar be declared unconstitutional on its face or as applied here.

3. That Amicus Briefs be solicited to address both sides of the questions raised herein from organization's and individuals who are not necessarily sponsored by the Bar.

4. That, in order to bring members of the unconscious conspiracy back to a state of consciousness, every member of the Florida Bar shall be assessed the greater of $5,000.00 or 10% of their gross income, which will be distributed to Reformer Smania's organization, "The Contempt of Court Club".

I hereby certify that on the 17th day of July, 1995 a true and correct copy of the foregoing with attachments was mailed by United States Postal Service (next day service) to Barry Rigby, 880 N. Orange Avenue, Suite 103. Orlando, FL 32801-1085.

/s/ Mary Ann Smania
Mary Ann Smania, Pro Se
3214 NW 22nd Avenue
Oakland Park, FL 33309
(305) 486-1961

The Grass Roots Journal

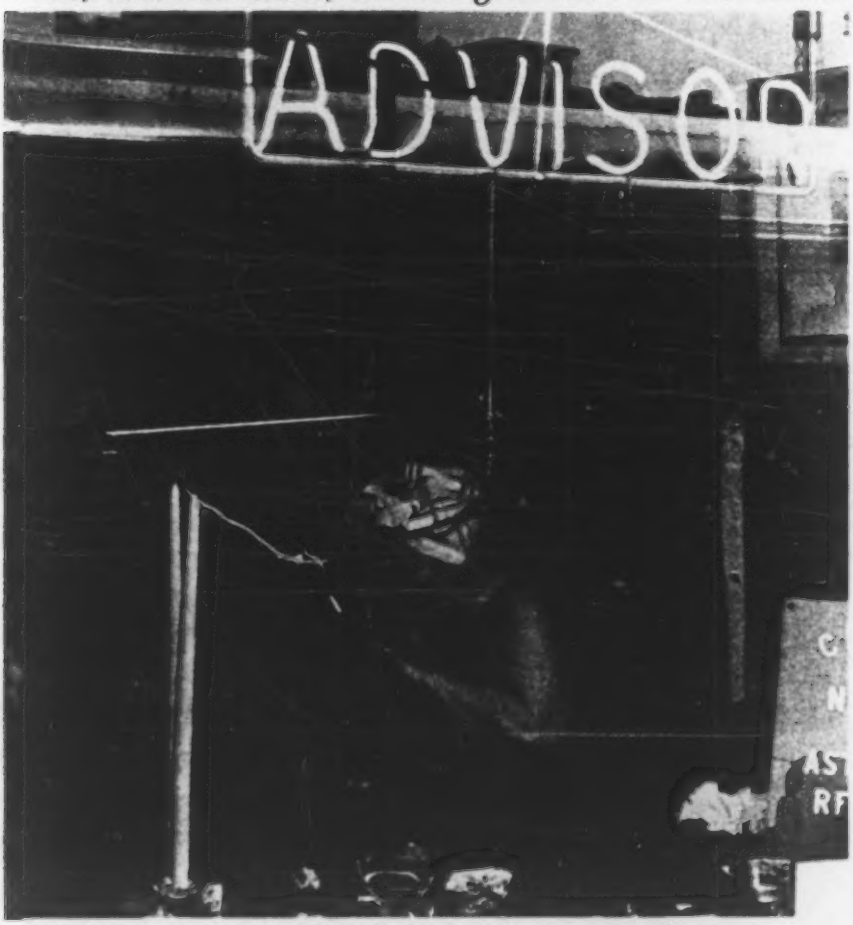
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Dear Advocate

Every edition of The Grass Roots Journal will have its own rendition of "Dear Abby" which we call "Dear Advocate". Please send legal reform questions to The Grass Roots Journal, P. O. Box 2949, Winter Park, FL 32790, attn: Advocate, and we get answers. This edition



of The Journal welcomes the founder of the Contempt of Court Club, Mary Ann Smania, as the guest Advocate. Mary Ann insists that her picture be published as part of the column!

Dear Advocate,

I am not a legal reformer and have no intent of becoming one. I work full time and take care of my three children. My problem is that I come from a wealthy family and after my husband died, I got sued for things in which he was involved that I knew nothing about. Upon the advice of my attorney, I countersued in some cases and the litigation got so out of hand that I ran out of money. My family has abandoned me for being so stupid. To top off everything, my attorney was "disbarred" and says he cannot help me. Actually, he's in jail for his involvement in some of my husband's business. I do not want to be "pro se", and I cannot afford another attorney. Can you help?

Abandoned and Alone

Dear Abandoned and Alone,

First of all, hang in there. You may feel you have been abandoned by the most significant people in your life, but actually they may have done you a favor if you can adjust your mind set to look at your situation differently.

Secondly, you have become a legal reformer, like it or not! You have written to the ADVOCATE for help. This means you have been reading the Journal, or you have someone in your life who is familiar with legal reform. Once a citizen becomes conscious of the problems in the

legal system, he or she is either a reformer or an offender. (Notice I did not use the word "victim", nor did I distinguish between attorneys and non attorneys. In my book there are only reformers and offenders, period!)

Thirdly, I sympathize with your position that you do not want to be "pro se". Most of us do not want or cannot afford the time and energy to be involved personally in litigation. We feel more protected, less intimidated and relieved of responsibility, if a "good" attorney is taking care of us. Believe it or not, I think that is the way it should be. The legal arena is the last intellectual forum where issues of sociological significance are decided through a process of intelligent debate, review of facts and reasonable behavior. It is unfortunate, *truly*, that the arena *is controlled* by people who just don't get it yet. Therefore, "Dear Abandoned", I say it is time for people like you and me to start making them "get it".

According to a historical review, in *Faretta v. The State of California*, 422 US 804, 45 LEd2d 562, 95 SCt 2525 (1970), we are all "pro se" figuratively speaking. The Sixth Amendment guarantees us assistance of counsel, not representation by an attorney. Representation by counsel is a whole different "ball game". So when you say, you do not want to be "pro se", and your disbarred attorney will not help you, I say you are pro se, and he or she *must* help you as per the Sixth Amendment. The problem is that the state Bars will not allow disbarred or suspended attorneys to help their clients even though a great deal of money may have been paid to them for representation. To add insult to injury, if the unfortunate attorney does attempt to help, a contempt of court charge will be issued

and that attorney can go to jail. In your case he will not help.

There is no remedy *yet* in the legal arena. If your attorney was a member of a firm, possibly another attorney in the "firm" can take over your cause. If the attorney was a sole practitioner that possibly doesn't work real well nor will it work if you have run out of money. Also, even if there is an attorney who could and would legitimately take over, that person could not possibly be sensitive to all complexities which have evolved in your case without an even more draining investment made you, the client. However, The Contempt of Court Club is working on a remedy *right now* and you be part of it.

The first thing you must do is *notice* the court that you are proceeding pro se and *appointing* the disbarred attorney as your constitutional co-counsel. I realize that this seems like a rather radical action which may get you into "trouble", but you are already in big trouble and your priority must be getting back control of your life. If the litigation is out of control, winning or losing the cases is of absolutely no importance right now.

Next, submit a memorandum of law supporting your position. This will make all your cases legal reform cases and will make them sociologically meaningful. I realize that you probably do not know what that means or how to go about writing memorandum of law, so that is where my club comes in.

The Contempt of Court Club is attempting to develop a constituency of legal reformers who are willing to pursue a legal reform agenda with all nonviolent means available. At times, this may mean civil disobedience,

such as practicing law without a license. Fortunately, in your case, you have a legal reform issue which we can legitimately fight within the legal arena. Therefore, the club will supply you with generic memorandums of law regarding your particular legal reform issue, i.e., noticing the court of your right to proceed pro se with the right to assistance of counsel of your choice. In addition, you will be supplied with copies of the three cases we have found which are relevant to this issue and you will be updated as more case law develops around this issue. Who knows, your case might be the one which we will get to the U.S. Supreme Court.

And lastly, "Alone and Abandoned", change your perspective. Those of us in the legal reform movement are truly proud of what we are doing. Try to develop that pride too. Do you remember the story of Rosa Parks? She was the black woman who refused to go to the back of the bus where blacks, *by law*, had to go because there was a time in our history when all "men" were not considered equal. Well Rosa stood her ground because her feet hurt. From those feet, an entire army grew which we now call the civil rights movement.

Hold your ground "Alone and Abandoned", we are with you.

COPY

IN THE SUPREME COURT OF FLORIDA

THE FLORIDA BAR,

Petitioner,

v.

MARY ANN SMANIA,

Respondent.

_____/

CASE NO. 85,818

TFB NO. 940088 (09B)

(Filed June 5, 1995)

PETITION AGAINST THE UNLICENSED PRACTICE OF LAW

The Florida Bar, Petitioner, charges MARY ANN SMANIA, Respondent, with engaging in the unlicensed practice of law in the State of Florida, and in support thereof, alleges:

I.

This Petition is filed pursuant to Chapter 10 of the Rules Regulating The Florida Bar.

II.

This Court has original and exclusive jurisdiction to prohibit the unlicensed practice of law pursuant to Article V, Section 15 of the Florida Constitution.

III.

Petitioner is charged with the duty and responsibility of initiating and prosecuting, in this Court, proceedings against the unlicensed practice of law.

IV.

The Board of Governors of The Florida Bar has authorized the institution of this proceeding against the Respondent.

V.

The Respondent, at all times material herein, was not and is not a member of The Florida Bar, and therefore was not licensed to engage in the practice of law in the State of Florida.

VI.

The Respondent has engaged in the unlicensed practice of law in Orange County and Volusia County, Florida, by one or more of the following acts:

1. Commencing on or about May 21, 1993, the Respondent began acting as legal counsel for Norma Vaughan in matters relating to Norma Vaughan's husband, Clarence Buford Vaughan. Based on pleadings signed by her, Respondent received or expected to receive compensation for her services.

2. The Respondent, along with non-lawyer Carolyn Fankhanel, acted as legal counsel for Norma Vaughan for a period continuing through at least September of 1993.

3. The Respondent gave legal advice to Norma Vaughan, and prepared and signed pleadings as set forth in the paragraphs below.

4. On or about May 21, 1993, the Respondent prepared, signed and filed or had filed pleadings in a dissolution of marriage case styled In Re: The Marriage of Clarence Buford Vaughan and Norma Vaughan, Case Number 92-12843 in the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida. On or about that date, the Respondent, along with Carolyn Fankhanel, prepared, signed and filed a Notice of Appearance "as a legal representative of Norma Vaughan," and a Memorandum of Law in Support of Wife's Appointment of Legal Reform Practitioner Representation. Contemporaneously, an Affidavit for Appointment of Counsel bearing the signature of Norma Vaughan was filed in this case. Upon information and belief, this affidavit was prepared by the Respondent and Carolyn Fankhanel. True and correct copies of these documents are attached hereto as Composite Exhibit "A."

5. On or about July 26, 1993, the Respondent, along with Carolyn Fankhanel, prepared, signed and filed or had filed a document entitled Notice of Change of Appearance. That document purported to change Norma Vaughan's status to *pro se*, but appointed the Respondent and Carolyn Fankhanel "Constitutional Co-Counsels." This document reads in pertinent part as follows:

> 3. Legal reform practitioner Fankhanel and Legal reform practitioner Smania are not attorneys, do not hold themselves out to be attorneys, and have no desire to practice law.

4. Legal reform practitioners Smania and Fankhanel have been threatened with charges of Unlicensed Practice of Law.

A true and correct copy of the Notice of Change of Appearance is attached hereto as Exhibit "B."

6. During the course of representing Norma Vaughan in the dissolution action, the Respondent attended hearings on behalf of Norma Vaughan, and gave legal advice to Norma Vaughan.

7. Commencing on or about August 2, 1993, the Respondent, along with Carolyn Fankhanel, prepared, signed and filed or had filed documents in the appeal of the dissolution action, Florida 5th District Court of Appeals Case Number 93-1377.

8. The Respondent, along with Carolyn Fankhanel, prepared, signed and filed or had filed with the 5th District Court of Appeals the following Documents: the Initial Brief of Appellant Norma Vaughan and a Request for Oral Argument (August 2, 1993); Motion for Emergency Stay or in the Alternative, Motion for Writ of Prohibition (August 13, 1993); Notice of Typographical Error (August 14, 1993); and Objection to Notice of Appearance of Gregory M. Wilson, Esquire (August 16, 1993). True and correct copies of these documents are attached hereto as Composite Exhibit "C."

9. By a series of Orders dated August 18, 1993, September 1, 1993, September 17, 1993 and October 27, 1993, the 5th District Court of Appeals questioned the propriety of the Respondent's and Carolyn Fankhanel's signatures on pleadings and appearance in the appellate

action. Ultimately, the 5th District Court of Appeals disqualified the Respondent and Carolyn Fankhanel from further appearing in the appeal. True and correct copies of these Orders are attached as Composite Exhibit "D."

VII.

The aforementioned actions of the Respondent have violated the letter and the spirit of this Court's decisions in *The Florida Bar v. Schramek*, 616 So. 2d 1993 (Fla. 1993); *The Florida Bar v. Furman*, 376 So. 2d 378 (Fla. 1979); app. dismissed 444 U.S. 1061, 100 S.Ct. 1001, 62 L.Ed. 744 (1980); *The Florida Bar v. Brumbaugh*, 355 So. 2d 1186 (Fla. 1978); and *The Florida Bar v. Sperry*, 140 So. 2d 587 (Fla. 1962). Furthermore, upon information and belief, the Respondent continues to act as a "legal reform practitioner." As a result, her actions present the potential for substantial public harm.

VIII.

At times material to this action, the Respondent knew that her actions constituted the unlicensed practice of law. With this knowledge, the Respondent continued to engage in activity which constituted the unlicensed practice of law. In fact, the Respondent was aware of this fact, as in her Notice of Appearance in the dissolution action (attached hereto as part of Composite Exhibit "A"), the Respondent listed her address as "%THE CONTEMPT OF COURT CLUB, P.O. BOX 330752, MIAMI, FL 33233."

WHEREFORE, Petitioner prays as follows:

1. That this Court issue a permanent injunction preventing and restraining Respondent from engaging in the acts complained of and from otherwise engaging in the practice of law in the State of Florida, until such time as Respondent is duly licensed to practice law in this state.

2. That the costs of this proceeding be taxed against Respondent.

3. That this Court grant such other and further relief as it may deem proper.

Respectfully submitted,

THE FLORIDA BAR

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By: /s/ Martin Jay Sperry
Martin Jay Sperry, Chair
Fla. Bar #0144917
Standing Committee on UPL

COMPOSITE EXHIBIT "A"

IN THE CIRCUIT COURT IN THE
NINTH JUDICIAL CIRCUIT IN AND FOR
ORANGE COUNTY, FLORIDA

CASE NO: 92-12843

IN RE: THE MARRIAGE OF
CLARENCE BUFORD VAUGHAN
PETITIONER/HUSBAND
AND
NORMA VAUGHAN
RESPONDENT/WIFE

AFFIDAVIT FOR APPOINTMENT OF COUNSEL

STATE OF FLORIDA
COUNTY OF ORANGE

BEFORE ME personally appeared NORMA VAUGHAN who has sworn that the following is true and correct:

1. My name is Norma Vaughan and I am the Respondent/wife in case number DR 92-12843.

2. I have been happily married to Clarence Buford Vaughan for approximately five years and do not wish to be divorced or separated physically from my husband.

3. To my knowledge there has never been any report that I have mentally or physically abused my husband, kept him personally unclean, denied him food or attention, or deprived him of the love which I promised when I took my wedding vows.

4. I have been physically separated from him through legal actions I do not understand. I have attempted on numerous occasions to get the assistance of

counsel to stop the invasion of our marriage and the divorce action.

5. Of the many attorneys I have interviewed, Mel Perlman was the only attorney who conveyed that he understood that my primary purpose in involving myself in this litigation was to preserve my marriage and be with my husband. All the other attorneys, including the ones who hinted that they might accept my case pro bono, conveyed the idea that a divorce, if litigated correctly, could result in a financial advantage to me. This latter litigation philosophy is totally unacceptable to me.

6. Chief Judge Frederick Pfeiffer has denied my access to our marrital [sic] funds which would allow me to retain attorney Mel Perlman.

7. On May 11, 1993, the transcript will show that when I attempted to communicate my desperate need for assistance of legal counsel, Judge George Sprinkel the IVth interpreted these facts to mean that I chose to be unrepresented. This is simply not true. As a matter of fact, when a friend acting as my support person attempted to communicate to the court reporter after the hearing had ended, Judge Sprinkel actually threatened my friend with a contempt of court charge under the guise that she was practicing law without a license.

8. Besides not having access to my marital funds which would allow me to have my counsel of choice, I have not been paid the $500.00 monthly stipend ordered by Chief Judge Frederick Pfeiffer for my living expenses. I am totally impoverished and have been given permission by the Florida Supreme Court to proceed as a pauper.

9. Also I have been denied access to my records. On May 12, 1993 at approximately 11:30 a.m., as I was reviewing my file in the clerk of the circuit court room in Orange County, I was surrounded by armed guards telling me that I would have to leave the premises or be arrested for trespassing.

10. In a state of total shock, I called my friend, Carolyn Fankhanel, who told me to come to her residence and bring any evidence of this incident with me.

11. Because I was so upset, I did not get the names of any of the guards who escorted me from the court house.

12. At approximately 1:00 p.m. on May 12, 1993, I went with Mary Ann Smania, a legal reform practitioner from Miami who was staying with Ms. Fankhanel, to the police station to find out about the alleged complaint and order which had been issued prohibiting me from entering the court house.

13. The police told me that they knew nothing about the incident and were not involved at all but that it would be in my best interest not to enter the court house myself until I obtained written documentation that I would not be arrested.

14. Since I have no legal representation nor any funds to hire a paralegal, I asked Ms. Smania to investigate the authority through which I was denied access to my records.

15. After about one hour, Ms. Smania emerged from the court house with a copy of a document which I had

not received at the time of the incident and which is attached hereto as Exhibit A.

16. According to Ms. Smania, who stated she had found one of the guards who acknowledged involvement in the incident, I allegedly had disrupted the traffic in the court house on May 11, 1993 by crying in the hall way and putting up posters regarding my case.

17. Since May 11, 1993 was the day that I was arbitrarily divorced from my husband, I was at all times in the company of my support group which consisted of approximately 12 people on that day or in the court room and in the presence of Judge George Sprinkel the IVth.

18. Although I do acknowledge that I was crying in the hall way, at no time was I asked to move or to stop crying. Also, at no time did I pass out any filers [sic] in the court house or post anything at all on the walls. At least 12 people can testify as to my activities and the volume of my crying on May 11, 1993 while I was in the court house.

19. Because I do not have the funds to retain my attorney of choice, Mel Perlman, and because I cannot represent myself and because I cannot even enter into the court house without threat of arrest, I hereby assign power of attorney to Carolyn Fankhanel and Mary Ann Smania to act as my representatives in any and all legal matters in case # DR92-12843.

20. Ms. Fankhanel and Ms. Smania hold themselves out to be legal reform practitioners who expect to be paid at least the amount which is available to the other parties attempting to make claims in my husband's estate for

legal representation, or $20,000.00 which represents the retainer which was required by my counsel of choice, Mel Perlman.

FURTHER AFFIANT SAYETH NAUGHT

/S/ Norma Vaughan
NORMA VAUGHAN,
IN PROPRIA PERSON*
1776 VIA PALERMO
WINTER PARK, FLORIDA
32789

SWORN TO AND SUBSCRIBED THIS 21ST DAY OF MAY, 1993.
(NOTARY SEAL)

/s/ L. E. O'Brien
Notary Public L.E. O'Brien
My Commission expires:
28 Dec. 96
Known To Me By Fl. Driver
Lic. #v250-627-34-711-0

*This document was prepared by Norma Vaughan and edited by Carolyn Fankhanel and Mary Ann Smania.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing AFFIDAVIT FOR APPOINTMENT OF COUNSEL has been furnished by U.S. Mail, first class postage affixed thereto, this 27 day of May, 1993 to

Solicitor Donald V. Scarlett, 1003 East Concord St., Orlando, Florida 32803.

/s/ Norma Vaughan
Norma Vaughan

IN THE CIRCUIT COURT IN
THE NINTH JUDICIAL CIRCUIT
IN AND FOR ORANGE
COUNTY, FLORIDA
CASE NO: 92-12843

IN RE: THE MARRIAGE OF
CLARENCE BUFORD
VAUGHAN
PETITIONER/HUSBAND
AND
NORMA VAUGHAN
RESPONDENT/ WIFE

_____/

NOTICE OF APPEARANCE

COMES NOW, MARY ANN SMANIA, and notices this court of her appearance as a legal representative of Norma Vaughan, respondent/wife in this action and states as follows:

1. Mary Ann Smania is a legal reform practitioner who is not an attorney whose background includes advanced degrees in the Social Sciences including, but not limited to, Sociology and Psychiatric Nursing.

2. This practitioner has accepted the appointment and power of attorney of Norma Vaughan to act as her representative only in this case and as co-counsel to fellow legal reform practitioner, Carolyn Fankhanel.

3. This case has been identified as having a legal reform agenda which is familiar to Practitioner Smania who has acted as co-counsel to a pro se litigant in the

previously identified gender bias case of *Kutz v. Fankhanel*, 608 So.2d 873, Fla. App. 5 Dist. 1992.

4. In addition to the gender bias issue, Practitioner Smania is experienced in the sociological ramifications resulting from case law which bastardizes legislation manipulated by the Florida Bar.

5. As a seasoned grass roots lobbyist, a legal reform agenda has been initiated by this practitioner through careful monitoring of attorney proposed legislation regarding condominium law.

6. In this particular case, the window that is opened to all attorney/guardians through Florida Statute 744.3215(4)(c) needs to be neutralized immediately and this glitch in the statute needs to be brought to the attention of the legislature before any more marriages are annihilated and lives destroyed.

7. In her previous experiences in court room participation, Practitioner Smania acted as a co-counsel to experienced pro se litigants/legal reformers who needed to argue the public policy ramifications of case law which were manipulated by attorneys to line their pockets.

8. In this case, the Practitioner has accepted Mrs. Vaughan as a "client" whom she will represent prior to case law being established because the parties are not sophisticated activists involved in a political or an issue oriented agenda, and Mrs. Vaughan has declared herself incapable of proceeding "pro se".

9. Besides the professional contribution that this Practitioner will make to the court in her representation of the respondent/wife, this Practitioner identifies to this

court her personal agenda about which she feels very strongly.

10. In *Rainey v. Rainey,* 38 So.2d 60, the Florida Supreme Court identified that if these circuit courts do not act within their moral responsibility to protect the spiritual interest of the law, there will always be people like Mary Ann Smania who will vehemently challenge their authority.

11. On March 23, 1993, Mary Ann Smania's long time, 52 year old companion, Gustave Alexander De Carlo, died. This legal reform Practitioner fully comprehends the experience of loving someone and caring for them "through sickness and in health, till death do them part."

12. This court had better understand that this legal reform Practitioner does not "pray", "beg", or "plead" for those human rights over which only The Forces have jurisdiction.

Submitted in the Spirit of
Legal Reform,

/s/ Mary Ann Smania
MARY ANN SMANIA, LEGAL
REFORM PRACTITIONER
%THE CONTEMPT OF
COURT CLUB
P.O. BOX 330752
MIAMI, FL 33233

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail, first class postage affixed thereto, this 21 day of May, 1993 to attorney/guardian for the *alleged* Petitioner/husband Donald V. Scarlett, 1003 East Concord St., Orlando, Florida 32803.

/s/ Mary Ann Smania
Mary Ann Smania